

James J. Reagan, Jr. and Irene Reagan  
v.  
Town of Lincoln  
Docket Nos.: 5968-89 and 9514-90

Thomas G. Leonard and Lois M. Leonard  
v.  
Town of Lincoln  
Docket Nos.: 5969-89 and 9515-90

Frank J. Forlizzi and Harriet Forlizzi  
v.  
Town of Lincoln  
Docket Nos.: 5970-89 and 9516-90

DECISION

These appeals were consolidated for hearing, and because they all share certain facts, a single decision is being issued for all appeals.

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessments of the following:

<u>Tax Map and Lot</u>	<u>1989 Assessment</u>	<u>1990 Assessment</u>
29/87 (Reagan)	\$208,750	\$208,750
29/88 (Leonard)	\$211,250	\$211,250
29/89 (Forlizzi)	\$208,750	\$208,750

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and proved disproportionality.

The Taxpayers testified that they each own a four bedroom "Reading Model" (townhouse style) condominium unit situated in the high density, 90 unit Lincoln Station Phase I condominium development. The units were the

first units developed by the Satter Companies ("Satter") in New Hampshire. Units #87 (Reagan) and #89 (Forlizzi) were the first two units transferred on October 28, 1983 and unit #88 (Leonard) transferred on November 2, 1983. Satter subsequently developed three additional condominium projects in Lincoln (Riverfront, The Lodge, and Forest Ridge) and one in Woodstock (Deer Park). Lincoln Station Phase I, Forest Ridge and Deer Park contain townhouse units

Reagan v. Town of Lincoln

Docket Nos.: 5968-89 and 9514-90

Leonard v. Town of Lincoln

Docket Nos.: 5969-89 and 9515-90

Forlizzi v. Town of Lincoln

Docket Nos.: 5970-89 and 9516-90

Page 3

and the interior and exterior design of Forest Ridge and Deer Park incorporate many improvements from the initial design concepts used by Satter.

The Taxpayers argued the assessments were excessive because:

- (1)the Town determined the values by applying a composite value for both land and buildings of \$85 per square foot and the square footage used was 2,456 which exceeds the actual square footage of 2,127 by 329 square feet;
- (2)a different assessment procedure was utilized by the Town at Forest Ridge development where building rates per square foot were applied to determine the values of the buildings and those amounts were then added to the land values which ranged from \$75,000 to \$90,000;
- (3)the interior and exterior design of the units at Forest Ridge is superior to that used at Lincoln Station and the site layout is substantially less dense at Forest Ridge than at Lincoln Station;
- (4)the composite values for finished four and five bedroom units at Forest Ridge range from \$68.89 to \$79.98 per square foot compared to \$98.14 to \$106.25 per square foot for four bedroom units at Lincoln Station;
- (5)there is substantial noise and traffic passing the subject properties as a result of being on a main roadway through the development used by occupants at The Lodge when travelling to Loon Mountain and used by Loon Mountain shuttle buses daily during the ski season;
- (6)no units at Forest Ridge are located on main roadways, they are set back from noise and traffic, and the rustic setting is far superior to Lincoln Station;
- (7)since all two and four bedroom units at Lincoln Station have the same footprint (square footage on the first level), the land values should be the same regardless of the size of the units;

Reagan v. Town of Lincoln

Docket Nos.: 5968-89 and 9514-90

Leonard v. Town of Lincoln

Docket Nos.: 5969-89 and 9515-90

Forlizzi v. Town of Lincoln

Docket Nos.: 5970-89 and 9516-90

Page 4

(8)an appraisal report prepared by John H. Kelly estimated the values as of April 1, 1989 to be: Unit #87 (Reagan) - \$170,000, Unit #88 (Leonard) - \$171,500, and Unit #89 (Forlizzi) - \$170,000, the difference in value on Unit #88 is the value of the sauna; and

(9)the Town has assessed the units at Lincoln Station in an arbitrary and inconsistent manner when compared to the approach used at Forest Ridge.

Reagan v. Town of Lincoln

Docket Nos.: 5968-89 and 9514-90

Leonard v. Town of Lincoln

Docket Nos.: 5969-89 and 9515-90

Forlizzi v. Town of Lincoln

Docket Nos.: 5970-89 and 9516-90

Page 5

The Town argued the assessments were proper because:

- (1)the development is located a couple of miles from the ski area, one and one-half miles from the interstate and in a resort community surrounded by the White Mountain National Forest;
- (2)for the 1987 revaluation, sales were used from 1985 to 1986 to establish the value as of April 1, 1987;
- (3)the market indicated a time trending of one percent per month for 1985 and two percent per month for 1986, and some properties indicated more time trending due to developer discounts -- many condominiums sold for \$15,000 to \$17,000 more than the purchase and sales agreements;
- (4)comparable sales support the assessments of the Reading units, and the selling prices were divided by the number of square feet of each unit to arrive at the indicated value of the properties;
- (5)the developer indicated that they were basically selling the properties by the square foot;
- (6)the Properties were appraised during the peak time and the market has dropped and many of the sales sampled were foreclosures or distressed sales;
- (7)Forest Ridge is not complete, there were plans for over 400 units for the entire development and it is not realistically within walking distance to restaurants or shops;
- (8)there is no market analysis to show that Lincoln Park is affected by the shuttle and noise;
- (9)the Taxpayers do not show where assessments are higher than selling prices;
- (10)when dealing with the replacement cost, you have to go by the exterior square footage rather than floor area; and

Reagan v. Town of Lincoln

Docket Nos.: 5968-89 and 9514-90

Leonard v. Town of Lincoln

Docket Nos.: 5969-89 and 9515-90

Forlizzi v. Town of Lincoln

Docket Nos.: 5970-89 and 9516-90

Page 6

(11)the Properties are not disproportionately assessed in relation to other units.

Based on the evidence, we find the correct assessments should be:

Tax Map and Lot19891990

29/87 (Reagan)\$187,875\$187,875

29/88 (Leonard)\$190,125\$190,125

29/89 (Forlizzi)\$187,875\$187,875

These assessments are ordered because the board found that a 10 percent reduction is warranted based on the market evidence that condominiums have

Reagan v. Town of Lincoln

Docket Nos.: 5968-89 and 9514-90

Leonard v. Town of Lincoln

Docket Nos.: 5969-89 and 9515-90

Forlizzi v. Town of Lincoln

Docket Nos.: 5970-89 and 9516-90

Page 7

decreased in value at a greater rate than values generally in the Town. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality. Estimating market value is not an objective technical determination but rather subject to the whims of the marketplace and to the subjective interpretations of appraisers. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b).

As stated above, the focus of our inquiry is proportionality, requiring a review of the assessment to determine whether the properties are assessed at a higher level than the level generally prevailing. Appeal of Town of Sunapee, 126 N.H. at 219; Stevens v. City of Lebanon, 122 N.H. 29, 32 (1982).

There is never one perfect assessment of a property. Rather, there is a range of acceptable assessments for each property. In weighing all of these factors, it is the board's judgment that a 10 percent reduction is warranted for 1989 and 1990. "Given all the imponderables in the valuation process, '(j)udgment is the touchstone.'" Public Service Co. v. Town of Ashland, 117 N.H. 635, 639 (1977).

If the taxes have been paid, the amount paid on the 1989 and 1990 values in excess of \$187,875 for Unit #87, \$190,125 for Unit #88, and \$187,875 for Unit #89, shall be refunded with interest at six percent per annum from date

Reagan v. Town of Lincoln

Docket Nos.: 5968-89 and 9514-90

Leonard v. Town of Lincoln

Docket Nos.: 5969-89 and 9515-90

Forlizzi v. Town of Lincoln

Docket Nos.: 5970-89 and 9516-90

Page 8

paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

Reagan v. Town of Lincoln

Docket Nos.: 5968-89 and 9514-90

Leonard v. Town of Lincoln

Docket Nos.: 5969-89 and 9515-90

Forlizzi v. Town of Lincoln

Docket Nos.: 5970-89 and 9516-90

Page 9

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Irene and James J. Reagan, Jr., Lois M. and Thomas G. Leonard, and Harriet and Frank J. Forlizzi, Taxpayers; and Chairman, Selectmen of Lincoln.

Date: September 1, 1992

Melanie J. Ekstrom, Deputy Clerk

0007